IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

FIRST APPEAL No 295 of 1981

For Approval and Signature:

HON'BLE MR.JUSTICE H.K.RATHOD

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

MUNICIPAL CORPORATION OF CITY OF AHMEDABAD

Versus

GOVINDBHAI ZAVERBHAI KAVI

Appearance:

1. First Appeal No. 295 of 1981

MR MG NAGARKAR for Petitioner No. 1

MR VH DIXIT for Respondent No. 1

CORAM : HON'BLE MR.JUSTICE H.K.RATHOD

Date of decision: 09/10/2003

ORAL JUDGEMENT

Heard learned advocate Mr. M.G. Nagarkar for the appellant. No one has remained present on behalf of

the respondent GOVINDBHAI ZAVERBHAI KAVI though appearance of the learned advocate Mr. V.H. Dixit has been filed for the respondent and in view of that and this being the old matter of the year 1981, this court has taken up the matter for final hearing in his absence. On behalf of the appellant Corporation, learned advocate Mr. Nagarkar has made his submissions.

In this appeal under section 96 of the Code of Civil Procedure, the appellant who is the original defendant in Civil Suit NO. 335 of 1977 decided by the trial court has challenged the judgment and decree dated 18th August, 1980 wherein the trial court has ordered and declared that the plaintiff was and is entitled to be confirmed in the grade of Rs.320-500 with effect from May 18, 1974 and the action of the defendant in not confirming him in the said grade is illegal and not binding to the plaintiff and has directed the appellant original defendant to make appropriate order within two months from the date of the said judgment confirming the plaintiff in the grade of Rs.320-500 and to pay Rs.400.00 as special allowance to the plaintiff with costs quantified at Rs. 300.00.

2. The facts of the present appeal, in short, are to the effect that the respondent original plaintiff, an employee of the present appellant corporation filed the suit challenging the order dated 7th July, 1976 as a result of which, he was transferred from the post of Valuation Officer to another Department, that is cattle Nuisance Control Department and has also challenged the action of the defendant in not confirming him in the grade of Rs.320-500 w.e.f. 18th May, 1974. The respondent also challenged the departmental inquiry proceedings instituted against the plaintiff by the defendant. The respondent plaintiff joined the services with the defendant corporation in the year 1950 and after being promoted and/or transferred to different posts, ultimately, he was selected on the post of valuation officer which carried the grade of Rs.320-500. According to the plaintiff, he is a qualified employee who has passed departmental examinations conducted by the defendant and he is the senior most employee and his name was placed at the top of the seniority list in the grade of Rs.320-500 and the persons junior to him working in the said grade have been confirmed in the said grade whereas the defendants have failed to confirm him under the pretext of some enquiries pending against him. According to the case of the respondent before the trial court, the selection committee that made his selection has given serial no.1 to the respondent and the same

selection being on seniority cum merit basis, the respondent was entitled to be confirmed in the said grade. It was the case of the respondent before the trial court that it was compulsory to appoint the employee on the basis of seniority cum merit in the said grade. Before the trial court, the respondent was referring to the post of valuation officer as a promotional post and it was his grievance that the motor cycle allowance which the plaintiff was getting when he was doing the job of valuation officer was discontinued on his transfer and posting in the Shardaben Hospital, Saraspur, AHmedabad of the corporation and as such, it was his submission that there is a financial loss to the plaintiff and it amounts to reduction in the wages of the employee without giving him any opportunity to submit his case against such reduction. The inquiry instituted against him has been challenged by the plaintiff on various grounds as narrated by the plaintiff in the plaint. It was specifically alleged by the plaintiff before the trial court that the inquiry instituted against the plaintiff was with mala fide intentions. It was also alleged by the plaintiff that the plaintiff was entitled to be confirmed in the grade of Rs.320-500 as per the rules and regulations applicable for such confirmation and the action of the defendant in not confirming the plaintiff was illegal, one sided, mala fide and without powers. It was the specific case of the respondent original plaintiff before the trial court that inspite of pendency of inquiries, many other employees of the appellant corporation were confirmed by the appellant where the allegations were very serious in nature. It was also alleged by the plaintiff before the trial court that the inquiries were kept pending against the plaintiff with a sole object to keep the question of confirmation of the plaintiff in the same grade pending. It was lastly alleged by the plaintiff that the order dated 7.7.76 referred to by the plaintiff in para 5 of the plaint of his posting as superintendent in the Saradaben Hospital was illegal and by the said order, the plaintiff was demoted from his present cadre and was deprived of his motor cycle allowance and according to him, said order was one sided, arbitrary, without application of mind, without following procedure and it was a punitive order imposed on the plaintiff without affording him any opportunity. On the aforesaid grounds, suit was filed by the respondent original plaintiff against the appellant corporation before the trial court after serving the appellant with a statutory notice dated 16.12.1976.

The suit of the respondent plaintiff was

contested by the appellant defendant before the trial court by filing written statement at Exh. 11 contending inter alia that the court has no jurisdiction tog rant the reliefs as prayed for by the plaintiff. It was denied that the plaintiff is the senior most employee amongst the employees. It was also denied by the appellant defendant before the trial court that the plaintiff is a senior most employee only because his name appears at sr.no.1 in the said selection list. The defendant admitted that some of the candidates out of the said selection have been made permanent but that was having regard to the facts of each case and it was the case of the defendant that because of some enquiries pending against the respondent, the respondent was not made permanent. Reference was made by the defendant to an industrial court award dated 22.9.73 and it was submitted by the defendant that the post in the grade of Rs.300-500 has to be filled in accordance with the seniority cum merits. According to the defendant, after the selection was made in pursuance to resolution no.72 of Staff Selection Committee, the promotion and appointment on permanent or substantive post depend upon the various factors and these factors according to the defendants, were experience and merits of each candidate. It was also alleged by the defendant that it cannot be said that the plaintiff has served in the said post sincerely because of the enquiries pending against him. The irregularities committed by the plaintiff in the cattle nuisance and contract department and also while serving as valuation officer in the octroi department were pointed out by the defendant before the trial court. It was alleged by the appellant original defendant before the trial court that the enquiries were still pending against the petitioner in respect of the charge sheets issued against him for the alleged breach of duties and that the plaintiff was taking part in politics and was making allegations against the political parties. According to the appellant defendant, being an employee of the corporation, the plaintiff was having no right to make allegations against the political parties. According to the defendant before the trial court, it was not in the interest of the defendant to make the plaintiff permanent in view of the pendency of enquiries against him. According to the defendant, as regards motor cycle allowance, the defendant has alleged that the said allowance was given to other employees depending upon the nature of the post and the vehicle allowance was not a part of his salary and the said allowance was not attached to the post and hence the plaintiff was not entitled for the said allowance. It was also alleged that the post of secretary in the hospital was not

attached with the vehicle allowance and as such, the plaintiff was not entitled for the said allowance as of right. The allegations of the plaintiff about mala fide intention were denied by the defendant and it was submitted that the order was bona fide and the defendant was having right to transfer the plaintiff from one department to another and as such the plaintiff was transferred. The defendant has referred to certain other suit proceedings that is civil suit no. 3938 of 1975 and civil suit no. 295 of 1976 by Noukar Mandal and other employees of the corporation and it was pointed out that the plaintiff was a defendant in the said suits wherein resolution no.72 dated 16.5.1973 was passed by the selection committee was under challenged. it was also alleged by the defendant that in the aforesaid suits, the plaintiff was supporting the plaintiffs of the said suits. On the basis of such averments, it was prayed by the appellant defendant before the trial court to dismiss the suit of the plaintiff.

On the basis of the aforesaid pleadings of the parties, the trial court framed issues at Exh. 17, as under:

(1) Does the plaintiff prove that the suit order dated July 7, 1976 is illegal and invalid?
(2) Does the plaintiff prove that the departmental enquiry proceedings instituted against the plaintiff are illegal and invalid ?
(3) Does the plaintiff prove that he is entitled to be confirmed in the grade of Rs.320-500 with effect from May 18, 1974 ?
(4) That relief or reliefs, if any, is the plaintiff entitled to claim in this suit?
(5) What final order and decree ?

As regards issues No. 1, in view of the submission made by the learned advocate before the trial court that as the plaintiff was posted on the post which was attached with the motor vehicle allowance, the plaintiff was not pressing the said issue, the trial court has not decided the said issue but has observed that it was not pressed by the plaintiff.

As regards issue no.2, before the trail court, learned advocate for the plaintiff has conceded that he was not pressing this issue as no final orders have been passed in the departmental inquiries. It was also clarified by him that the petitioner is reserving his rights to challenge the said departmental proceedings at an appropriate stage and therefore, he is not pressing

the issue no. 2 without prejudice to the rights and contentions of the plaintiff to challenge the said departmental proceedings at appropriate time and in view of the said statement, issue no.2 was also decided as not pressed.

Issue No.3 was relating to the entitlement of the respondent plaintiff for being confirmed in the grade of Rs.320-500 with effect from May 18, 1974. While considering this issue, the trial court has considered Exh.3 9, the order which was passed by the Municipal Commissioner appointing valuation officer in acting capacity to the post and in the department mentioned against each of that names in the pay scale of Rs.320-500 and other allowance and the order dated 17.5.83. The request made by the plaintiff for confirmation in the said ground was rejected only on the ground of pendency of certain departmental proceedings against the plaintiff. The trial court has considered that in the selection list at Exh. 349, the name of the plaintiff was appearing at sr. no.1 and according to the plaintiff, said seniority numbers were given as per the seniority cum merit of the candidates and as the plaintiff was at sr.no.1, he was having chances for further promotion from the post carrying the grade of Rs.320-500. The trial court has considered the oral evidence of the plaintiff wherein the plaintiff had given certain details with respect to certain other employees against whom the enquiries were pending and yet they were confirmed and the names of such employees were also given by the plaintiff in his oral evidence. After appreciating the evidence on record, it was observed by the trial court that the defendant appellant has not been able to produce any resolution or rule to satisfy the court that only because of the pendency of the departmental enquiries, an employee cannot be confirmed in the post in which he was selected. It was also observed by the trial court that the statement of the plaintiff that certain employees against whom departmental inquiries were pending were confirmed in their post has not been contradicted by the defendant and that there has been no cross examination in that regard and in view of that, it has been observed by the trial court that it is having no hesitation in accepting the evidence of the plaintiff with regard to the contentions raised by the plaintiff that the reason stated by the defendant for not confirming the plaintiff in the said grade is unrerasonable and illegal. It has also been observed by the trial court that the order passed by the defendant dated 8/7/1974 denying such confirmation is not supported by any rules framed by the defendant or any

resolution to support the contentions raised by the defendant. The trial court has then considered as to whether the defendant has been justified in in refusing the confirmation of the plaintiff on his present post in grade of Rs.320-500 and it has been observed that no evidence to support the contentions of the defendant has been produced by the defendant. After appreciating all these aspects and various other aspects as narrated in the detailed and elaborate judgment, the trial court has answered issue no.3 in the affirmative based upon the findings on issue no.3, ultimately, in answer to issue no.4, it was held by the trial court that the plaintiff is entitled for being confirmed in the grade of Rs.320-500; the plaintiff is entitled for Rs.200.00 towards the costs and Rs.400.00 as special allowance in place of motor cycle allowance and has accordingly decreed the suit of the plaintiff to that extent.

During the course of hearing, learned advocate Mr. Nagarkar appearing for the appellant original defendant has submitted that the trial court has erred in not appreciating that the respondent plaintiff was not confirmed in the grade of Rs.320-500 because of pendency of some enquiries against him. He also submits that the trial court ought to have appreciated that the motor vehicle allowance was attached to the work and, therefore, after his transfer from one department to another department, the respondent has no right to claim and receive such allowance and therefore, the trial court ought not to have granted such allowance in place of motor vehicle allowance. According to him, the trial court has erred in granting such allowance in place of motor vehicle allowance.

I have perused the impugned judgment and order passed by the learned Judge of the City Civil Court No. 18, Ahmedabad in Civil Suit No. 335 of 1977. I have also perused the relevant records and proceedings relating to the said suit. I have also kept in mind the fact that at the time of admitting this first appeal, no stay has been granted by this court against the judgment and order in question. Meaning thereby, the appellant original defendant must have, by now, implemented the judgment and decree passed by the trial court in favour of the respondent original plaintiff. It is also necessary to consider that at the time when the suit was filed by the respondent plaintiff in the year 1977, at that relevant time, age of the respondent was 52 years. In view of that and considering the age of superannuation as 58 years, in the year 1983, the plaintiff must have reached the age of superannuation. After his retirement in the year 1983,

about 20 years have passed by now and in view of that, by now, the respondent plaintiff must have crossed the age of 77 years.

I have also considered that the trial court has discussed each and every issue and has considered relevant rules and regulations as well as the deposition of the respective witnesses produced by the parties. I have also considered that the trial court has not granted any benefit to the plaintiff contrary to the service rules. Further, at the time when the respondent was working as Valuation Officer, he was already drawing the salary in the pay scale of Rs.320-500. The trial court has granted only confirmation in the scale wherein he was already working and drawing the scale and therefore, it cannot be said that any new financial burden has been created by the trial court in directing the appellant to confirm the appellant in the said grade, even after his transfer as a Secretary in the Shardaben Hospital. Thus, the trial court was right in discussing and appreciating the evidence on record and in granting special allowance of Rs.400.00 in favour of the petitioner p.m. and the trial court has rightly granted the relief of confirmation of the grade of Rs.320-500. I am of the opinion that the reasons recorded and the conclusions drawn by the trial court are based on the appreciation of the evidence on record. I am of the opinion that the reasons given by the trial court are quite cogent and convincing. The trial court was right in granting benefit of special allowance. Even in the case of transfer also as a Secretary in Shardaben Hospital, there was split duty and the petitioner was required to attend two occasions. I am, therefore, of the opinion that the trial court was right in appreciating the entire facts and circumstances of the case; was right in discussing each and every issue properly. Learned advocate Mr. Nagarkar appearing for the appellant has not been able to establish that the trial court has committed any jurisdictional error and/or irregularity in granting relief in favour of the plaintiff. He has also not been able to point out that the findings of the trial court are perverse. I am, therefore, I am of the opinion that the trial court has not committed any error in granting the relief in favour of the respondent original plaintiff. I am also of the opinion that the findings given by the trial court are not perverse and it has not committed any jurisdictional error and/or irregularity in granting the relief in favour of the respondent original plaintiff. Therefore, there is no substance in this appeal and the same is required to be dismissed.

In the result, this appeal is dismissed. There shall be no order as to costs.

Dt.9.10.2003. (H.K. Rathod,J.)
Vyas